

Minneapolis Community Development Agency

Request for City Council Action

Date: December 16, 2003

To: Council Member Lisa Goodman, Community Development Committee
Council Member Barbara Johnson, Ways and Means/Budget Committee
Refer to: MCDA Board of Commissioners

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Approved by: Lee Sheehy, CPED Director
Chuck Lutz, Deputy CPED Director _____

**Subject: Village at St. Anthony Falls Project
Refinancing of Block 2 and Block 3 Tax Increment Notes**

Previous Directives: On June 5, 2000 the City Council and MCDA Board approved the establishment of the East Hennepin & University Redevelopment Project Area and Tax Increment Financing District, and authorized the execution of a redevelopment contract based on approved business terms. On October 16, 2000 the City Council and MCDA Board authorized the issuance of tax increment debt for the project, including amendments to the MCDA's 2000 Appropriation Resolution. On May 16, 2003 the City Council and MCDA Board approved a modification to the minimum assessment agreement for Block 3. While there have been many other directives with regards to this project, those listed above are the most relevant to the subject of this report.

Ward: 5

Neighborhood Group Notification: N/A

Consistency with *Building a City That Works*: Goal 2: Ensure that an array of housing choices exist to meet the needs of our current residents and attract new residents to the city. Goal 6: Manage existing financial resources effectively and identify new sources of revenue to carry out our mission.

Comprehensive Plan Compliance: N/A

Zoning Code Compliance: N/A

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Impact on MCDA Budget: (Check those that apply)

- ☐ No financial impact
- ☒ Action requires an appropriation increase to the City Budget
- ☒ Action provides increased revenue for appropriation increase
- ☐ Action requires use of contingency or reserves
- ☐ Other financial impact (Explain):

Living Wage / Business Subsidy: N/A

Job Linkage: N/A

Affirmative Action Compliance: N/A

RECOMMENDATION:

City Council Recommendation: The CPED Director recommends that the City Council:

- 1) Adopt the attached resolution relating to the issuance of up to:
 - a) \$8,000,000 in Tax-Exempt Tax Increment Revenue Refunding Bonds; and
 - b) \$4,400,000 Taxable Tax Increment Revenue Refunding Notes.
- 2) Amend the 2004 Appropriation Resolution to:
 - a) Increase the revenue budget for Fund DDT (St. Anthony Debt Service) by \$8,000,000 (3910-01 Proceeds of Bonds) and by \$4,400,000 (3911-01 Proceeds of Notes).
 - b) Increase the appropriation for Fund DDT (St. Anthony Debt Service) by \$12,400,000.

MCDA Board Recommendation: The CPED Director recommends that the MCDA Board:

- 1) Authorize the termination of the Block 2 Minimum Assessment Agreement and the termination of that portion of the Block 3 Minimum Assessment Agreement associated with Building A.
- 2) Authorize any technical amendments to the contract necessary to allow the refunding of the Block 2 and Block 3 Tax Increment Notes.

Background

The Village at St. Anthony Falls Project (a.k.a. St. Anthony East Bank Village Project) is a three-block project in the Nicollet Island/East Bank neighborhood. The developers, Dan Hunt and Arnie Gregory, approached the City and Agency in the fall of 1999 seeking public assistance for the project in the form of tax increment financing, pollution grants, housing revenue bonds, and other financial assistance. In June of 2000 the City

Council approved establishment of the East Hennepin & University Tax Increment Financing District (#102). The TIF district encompasses the entire three-block project.

Block 1 of the project is located at the northwest corner of Hennepin Ave. E. & University Ave. NE. Development on this block is complete and encompasses first floor commercial space (15,000 sq. ft.), 30 affordable rental housing units on the 2nd and 3rd floors, rehabilitation of the historic Firebarn and Annex for commercial uses (30,000 sq. ft.) and a structured parking facility.

Block 2 of the project is located at the northwest corner of 1st Ave NE. & University Ave. NE. Development on this block is complete and encompasses 48 for-sale townhomes in eight buildings.

Block 3 of the project is located at the northwest corner of 1st Ave NE & 2nd St. NE. Upon completion, development on this block will include 1) 47 for-sale loft units in Building A, 62 for-sale loft units in Building B, and 12 Brownstone units. While Building A has been completed, Building B and the Brownstones have just begun construction and it is estimated that it will take approximately 18-24 months to complete and close all units.

Tax Increment Financing Assistance

The Agency entered into a redevelopment contract with the developer on July 18, 2000. The contract was amended several times in early-to-mid 2001. In the amended contract the Agency agreed to provide \$8,525,000 in tax increment assistance to the project. This assistance was used to help pay for eligible public redevelopment costs, including land acquisition, demolition, relocation, environmental remediation, public infrastructure and structured parking.

This tax increment assistance is being generated by development within the three-block project as follows:

Block 1	\$1,325,000
Block 2	2,000,000
Block 3	<u>5,200,000</u>
	\$8,525,000

The \$7,200,000 in tax increment assistance generated by development on Block 2 and Block 3 was provided by the Agency through its issuance of the following notes:

\$2,737,000 - Block 2 Taxable Tax Increment Rev. Notes (the "Block 2 Notes")
(interest rate = 9.0%)

\$7,369,000 - Block 3 Taxable Tax Increment Rev. Notes (the "Block 3 Notes")
(interest rate = 8.0%)

The proceeds from the sale of each note were used to provide the amount of tax increment assistance shown above, fund capitalized interest, and pay for costs of issuance. Each note has a five-year term with a balloon payment at maturity. These notes were sold to community banks in the upper Midwest and are secured by a “minimum assessment agreement” and “developer guaranty” for each issue.

Refinancing/Refunding of the Block 2 and Block 3 Notes

The redevelopment contract and finance plan for the project state that once the development on Block 2 had been completed and is fully assessed, and the developer meets various contractual obligations, then the Agency/City will refinance the Block 2 Notes with long-term tax-exempt tax increment revenue bonds. Similarly, once the development on Block 3 had been completed and is fully assessed, and the developer meets various contractual obligations, then the Agency/City will refinance the Block 3 Notes with long-term tax-exempt tax increment revenue bonds.

In each case the bonds will be payable, over the life of the existing TIF district, solely from tax increment generated by completed and fully assessed development. Since these obligations will be issued on a tax-exempt basis, no minimum assessment agreements or developer guaranties will be allowed (per Federal tax code). All bonds will be structured with 1.25 debt service coverage and will have a one-year debt service reserve (both provisions required by bondholders).

As previously mentioned, at the present time all of the development on Block 2 is complete and some of the development on Block 3 is also complete (Building A). Because the developer has met various requirements of the redevelopment contract, the Agency/City is obligated to refinance at least the Block 2 Notes. However, because note and bond interest rates are exceptionally low at this time, CPED and City Finance staff feel that it is an opportune time to refinance both the Block 2 and Block 3 Notes.

To accomplish this refinancing, all of the Block 2 and Block 3 Notes will have to be called (paid off). These funds will be provided by the City issuing the following refunding debt for the project:

\$8,000,000 - Tax-Exempt Tax Increment Revenue Refunding Bonds
(the “Refunding Bonds”)(projected average long-term interest rate = 5.8%)

\$4,400,000 - Taxable Tax Increment Revenue Refunding Notes
(the “Refunding Notes”)(projected interest rate = 6.25-6.5%)

The principal amounts shown above are maximum (not to exceed) amounts. If current interest rates hold steady for the next 1-2 months, the principal amounts of the Refunding Bonds and Notes will be closer to \$7.6M and \$4.0M, respectively. The

Refunding Bonds will be sold to institutional and accredited investors, and will be payable solely from tax increment generated by Block 2 development and Building A on Block 3. At the time of sale, the Block 2 Minimum Assessment Agreement (between the Agency and the developer) will be terminated. In addition, that portion of the Block 3 Minimum Assessment Agreement representing Building A will also be terminated.

The new Refunding Notes will be sold to community banks in the upper Midwest, will have a 3-year term (with balloon), and will be secured by the existing Block 3 Minimum Assessment Agreement (less Building A) and a new developer guaranty. In several years when Building B and the Brownstones are completed and closed on Block 3, these notes will also be refunded with long-term tax-exempt tax increment revenue bonds.

Relating to the tax increment financing of public improvements related to the Village at St. Anthony Falls multifamily housing development located in the East Hennepin & University Tax Increment Financing District; authorizing the issuance of Tax Increment Revenue Refunding Bonds (Village at St. Anthony Falls Project), Series 2004, and Taxable Tax Increment Revenue Refunding Notes (Village at St. Anthony Falls Project), Series 2004; and providing the form, terms, pledge of revenues, and findings, covenants, and directions relating to the issuance of such obligations

RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

SECTION 1. BACKGROUND

1.01. The Minneapolis Community Development Agency (the “Agency”) and the City of Minneapolis (the “City”) established the East Hennepin & University Tax Increment Financing District (the “TIF District”) pursuant to authority granted by Minnesota Statutes, Sections 469.174-469.179, as amended (the “Tax Increment Act”), within the East Hennepin & University Redevelopment Project Area (the “Redevelopment Project”), and adopted a tax increment financing plan for the purpose of financing certain improvements within the TIF District. In order to provide for the redevelopment of the Redevelopment Project and the TIF District and, specifically, to provide for the redevelopment of a three-block site located in the TIF District on the east bank of the Mississippi River at the intersection of Hennepin Avenue East and University Avenue East, referred to generally as the Village at St. Anthony Falls Project (the “Project”), the Agency entered into a Contract for Private Redevelopment, dated July 18, 2000, as amended (the “Contract”), between the Agency and Fire Barn Associates, LLC and its assignees (collectively, the “Redeveloper”). The Project is comprised, in part, of forty-eight (48) market-rate townhouses located on the block designated as Block 2 (the “Block 2 Improvements”) and one hundred and twenty-one (121) market-rate lofts and brownstone units located on the block designated as Block 3 (the “Block 3 Improvements”).

1.02. Pursuant to Section 469.178 of the Tax Increment Act, the Agency is authorized to issue and sell its bonds or notes for the purpose of financing public development costs in a redevelopment projects and to pledge tax increment revenues derived from a tax increment financing district established within the redevelopment project to the payment of the principal of and interest on such obligations.

1.03. On October 27, 2000, the Board of Commissioners of the Agency adopted Resolution No. 2000-2336M of the Agency (the “Note Resolution”), which provided for the issuance and sale of its tax increment revenue notes. Pursuant to the terms of the Note Resolution, the Agency issued its Block 2 Taxable Tax Increment Revenue Note (The Village at

St. Anthony Falls Project), Series 2001 (the "Block 2 Note"), in the principal amount of \$2,737,000, dated as of March 20, 2001, payable solely from a portion of the proceeds of the Block 2 Note and from tax increment revenues generated from Block 2. Pursuant to the terms of the Note Resolution, the Agency issued its Block 3 Taxable Tax Increment Revenue Notes (The Village at St. Anthony Falls Project), Series 2001 (the "Block 3 Note"), in the original stated principal amount of \$8,786,000, but initially funded in the amount of \$6,739,000, and later funded in the amount of an additional \$630,000 for a total funded amount of \$7,369,000. The Block 3 Notes are payable solely from a portion of the proceeds of the Block 3 Notes and from tax increment revenues generated from Block 3. The Block 2 Note and the Block 3 Notes are hereinafter referred to collectively as the "Series 2001 Notes."

1.04. Pursuant to the terms of the Contract, the Agency agreed to refund the Series 2001 Notes with tax-exempt tax increment revenue bonds when the conditions set forth in the Contract for the issuance of such revenue bonds have been satisfied. Such conditions have been satisfied for the Block 2 Note and a portion of the Block 3 Note.

SECTION 2. ISSUANCE OF THE BONDS AND THE NOTES

2.01. In order to refund the outstanding principal amount of the Block 2 Note and the Block 3 Notes, there is hereby authorized to be issued by the City the Bonds and the Notes, as hereinafter defined.

2.02. In order to refund the outstanding principal amount of the Block 2 Note and a portion of the Block 3 Note, the City Council hereby authorizes the issuance of tax increment revenue bonds to be designated as the "Tax Increment Revenue Refunding Bonds (Village at St. Anthony Project), Series 2004 (the "Bonds"), in a principal amount not to exceed \$8,000,000. The Bonds shall be issued on such date and upon the terms and conditions determined by the Finance Officer of the City (the "Finance Officer"). The Bonds may be designated such other name or names as determined to be appropriate by the Finance Officer. The Bonds shall be issued in one or more series as the Finance Officer may determine, and shall be assigned a separate series designation determined by the Finance Officer for each series issued by the City. The Bonds are authorized to be issued as obligations the interest on which is not includable in gross income for federal and State of Minnesota income tax purposes. This authorization to issue the Bonds is effective without any additional action of the City Council and shall be undertaken by the Finance Officer on such date or dates and upon the terms and conditions deemed reasonable by the Finance Officer. The City Council hereby authorizes the sale of the Bonds to the underwriter hereinafter selected by the Finance Officer to purchase the Bonds (the "Underwriter") upon the offer of the Underwriter to purchase the Bonds in accordance with the terms of a Bond Purchase Agreement between the City and the Underwriter (the "Bond Purchase Agreement").

2.03. There have been presented to the City Council forms of the following documents: (i) an Indenture of Trust (the "Indenture"), between the City and a financial institution selected by the Finance Officer to act as trustee with respect to the Bonds (the "Trustee"); (ii) a Pledge Agreement (the "Pledge Agreement"), between the City and the Trustee; and (iii) the Bond Purchase Agreement. The Indenture, the Pledge Agreement, and the Bond Purchase Agreement

are hereby approved in substantially the forms on file with the City on the date hereof, subject to such changes not inconsistent with this resolution and applicable law that are approved by the Finance Officer of the City.

2.04. The Bonds shall have the maturities, interest rate provisions, shall be dated, numbered, and issued in such denominations, shall be subject to mandatory and optional redemptions and prepayment prior to maturity, shall be executed, sealed, and authenticated in such manner, shall be in such form, and shall have such other details and provisions as are prescribed in the Indenture. The forms of the Bonds included in the Indenture are approved in substantially the forms in the Indenture, subject to such changes not inconsistent with this resolution and applicable law, and subject to such changes that are approved by the Finance Officer. Without limiting the generality of the foregoing, the Finance Officer is authorized to approve the original aggregate principal amount of each series of Bonds to be issued under the terms of this resolution (subject to the maximum aggregate principal amount for all series authorized by this resolution), to establish the terms of redemption, the principal amounts subject to redemption, and the dates of redemption of the Bonds, and to approve other changes to the other terms of the Bonds which are deemed by the Finance Officer to be in the best interests of the City. The issuance and delivery of the Bonds shall be conclusive evidence that the Finance Officer has approved the terms and provisions of the Bonds in accordance with the authority granted by this resolution. The proceeds derived from the sale of the Bonds, and the earnings derived from the investment of such proceeds, shall be held, transferred, expended, and invested in accordance with determinations of the Finance Officer.

2.05. The Bonds shall be secured by the terms of the Indenture and the Pledge Agreement and shall be payable solely from Available Tax Increments (as defined in the Pledge Agreement) that are expressly pledged to the payment of the Bonds pursuant to the terms of the Indenture and the Pledge Agreement.

2.06. In order to refund the outstanding principal amount of the portion of the Block 3 Note not refunded with the Bonds, the City Council hereby authorizes the issuance of tax increment revenue notes to be designated as the "Taxable Tax Increment Revenue Refunding Notes (Village at St. Anthony Project), Series 2004 (the "Notes")", in a principal amount not to exceed \$4,400,000. The Notes shall be issued on such date and upon the terms and conditions determined by the Finance Officer. The Notes may be designated such other name or names as determined to be appropriate by the Finance Officer. The Notes shall be issued in one or more series as the Finance Officer may determine, and shall be assigned a separate series designation determined by the Finance Officer for each series issued by the City. The Notes shall be issued as obligations the interest on which is includable in gross income for federal and State of Minnesota income tax purposes. This authorization to issue the Notes is effective without any additional action of the City Council and shall be undertaken by the Finance Officer on such date or dates and upon the terms and conditions deemed reasonable by the Finance Officer. The City Council hereby authorizes the sale of the Notes with the assistance of a placement agent hereinafter selected by the Finance Officer (the "Placement Agent"). The City shall sell the Notes to the purchasers to whom the Placement Agent has placed the Notes (the "Purchasers") in accordance with the terms of a Private Placement Agreement between the City and the Purchasers (the "Private Placement Agreement").

2.07. There have been presented to the City Council forms of the following documents: (i) the form of the Notes; (ii) the Guaranty Agreement (the “Guaranty”) executed by the guarantor or guarantors approved by the Finance Officer (the “Guarantor”); and (iii) the Private Placement Agreement. The form of the Notes, the Guaranty, and the Private Placement Agreement are hereby approved in substantially the forms on file with the City on the date hereof, subject to such changes not inconsistent with this resolution and applicable law that are approved by the Finance Officer of the City.

2.08. The Notes shall have the maturities, interest rate provisions, shall be dated, numbered, and issued in such denominations, shall be subject to mandatory and optional redemptions and prepayment prior to maturity, shall be executed, sealed, and authenticated in such manner, shall be in such form, and shall have such other details and provisions as are prescribed in the form of the Notes and in the Private Placement Agreement. The form of the Notes is hereby approved, subject to such changes not inconsistent with this resolution and applicable law, and subject to such changes that are approved by the Finance Officer. Without limiting the generality of the foregoing, the Finance Officer is authorized to approve the original aggregate principal amount of each series of Notes to be issued under the terms of this resolution (subject to the maximum aggregate principal amount for all series authorized by this resolution), to establish the terms of redemption, the principal amounts subject to redemption, and the dates of redemption of the Notes, and to approve other changes to the other terms of the Notes which are deemed by the Finance Officer to be in the best interests of the City. The issuance and delivery of the Notes shall be conclusive evidence that the Finance Officer has approved the terms and provisions of the Notes in accordance with the authority granted by this resolution. The proceeds derived from the sale of the Notes, and the earnings derived from the investment of such proceeds, shall be held, transferred, expended, and invested in accordance with determinations of the Finance Officer.

2.09. The Notes shall be secured by the terms of the Notes, the Assessment Agreement, the Guaranty, and the Pledge Agreement and shall be payable solely from Available Tax Increments (as defined in the Pledge Agreement) that are expressly pledged to the payment of the Notes pursuant to the terms of the Notes and the Pledge Agreement, or from payments made by the Guarantor pursuant to the terms of the Guaranty.

2.10. It is hereby found, determined and declared that the issuance and sale of the Bonds and the Notes, the execution and delivery by the City of the Indenture, the Pledge Agreement, the Bond Purchase Agreement, the Private Placement Agreement, and the Assessment Agreement (the “City Documents”), and the performance of all covenants and agreements of the City contained in the City Documents, and of all other acts required under the Constitution and laws of the State of Minnesota to make the Bonds and the Notes the valid and binding special obligations of the City enforceable in accordance with their respective terms, are authorized by applicable Minnesota law, including, without limitation, the Tax Increment Act and this Resolution.

2.11. Under the provisions of the Tax Increment Act, and as provided in the Indenture and under the terms of the Bonds and the Notes, the Bonds and the Notes are not to be payable

from or chargeable against any funds other than the revenues and assets pledged to the payment thereof; the City shall not be subject to any liability thereon other than from such revenues and assets pledged thereto; no holder of any Bonds or Notes shall ever have the right to compel any exercise by the City of its taxing powers (other than as contemplated by the pledge of tax increment revenues under the terms of the Pledge Agreement) to pay the principal of, premium, if any, and interest on the Bonds or Notes, or to enforce payment thereof against any property of the City other than the property expressly pledged thereto; the Bonds and the Notes shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City other than the revenues or assets expressly pledged thereto; the Bonds and the Notes shall recite that the Bonds and the Notes are issued without a pledge of the general or moral obligation of the City, and that the Bonds and the Notes, including interest thereon, are payable solely from the revenues and assets pledged to the payment thereof; and the Bonds and the Notes shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation of indebtedness.

SECTION 3. DISCLOSURE DOCUMENTS AND CLOSING CERTIFICATES

3.01. The preparation of an Official Statement (or other form of disclosure document) in conjunction with the offer and sale of the Bonds is hereby authorized. When approved by the Finance Officer of the City, the Official Statement (or other form of disclosure document) is authorized to be distributed in conjunction with the offer and sale of the Bonds. In order to provide for continuing disclosure with respect to the Bonds, to the extent deemed necessary, required, or appropriate by the Finance Officer, the Finance Officer and the Trustee may execute and deliver an agreement or certificate providing for continuing disclosure with respect to the Bonds.

3.02. The preparation of an Official Statement (or other form of disclosure document) in conjunction with the offer and sale of the Notes is hereby authorized. When approved by the Finance Officer of the City, the Official Statement (or other form of disclosure document) is authorized to be distributed in conjunction with the offer and sale of the Notes. In order to provide for continuing disclosure with respect to the Notes, to the extent deemed necessary, required, or appropriate by the Finance Officer, the Finance Officer and the Trustee may execute and deliver an agreement or certificate providing for continuing disclosure with respect to the Notes.

3.03. The Finance Officer is authorized to furnish to the purchasers of the Bonds and the Notes, on the date of issuance and sale of the Bonds and the Notes, a certificate that, to the best of the knowledge of such officer, each Official Statement (or other form of disclosure document) does not, as of the date of closing, and did not, as the time of sale of the Bonds or the Notes, contain any untrue statement of a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Unless litigation shall have been commenced and be pending questioning the Bonds or the Notes, the proceedings for approval of the Bonds or the Notes, tax increment revenues generated or collected for payment of the Bonds or the Notes, revenues pledged for payment of the Bonds or the Notes, or the organization of the City, or incumbency of its officers, at the respective closings, the Finance Officer shall also execute and deliver a suitable certificate as to absence of

material litigation, and the Finance Officer shall also execute and deliver a certificate as to payment for and delivery of the Bonds and the Notes, and the signed approving legal opinion of Kennedy & Graven, Chartered, as to the validity and enforceability of the Bonds and the Notes and the tax-exempt status of interest on the Bonds.

3.04. The City Clerk, the Finance Officer, and other agents, officers, and employees of the City are hereby authorized and directed, individually and collectively, to furnish to the attorneys approving the Bonds and the Notes, on behalf of the purchasers of the Bonds and the Notes, certified copies of all proceedings and certifications as to facts as shown by the books and records of the City, and the right and authority of the City to issue the Bonds and the Notes, and all such certified copies and certifications shall be deemed representations of fact on the part of the City. Such officers, employees, and agents of the City are hereby authorized to execute and deliver, on behalf of the City, all other certificates, instruments, and other written documents that may be requested by bond counsel, the Underwriter, the Purchasers, the Guarantor, the Trustee, or other persons or entities in conjunction with the issuance of the Bonds and the Notes and the expenditure of the proceeds of the Bonds and the Notes. Without imposing any limitations on the scope of the preceding sentence, such officers and employees are specifically authorized to execute and deliver one or more UCC-1 financing statements, a certificate relating to federal tax matters including matters relating to arbitrage and arbitrage rebate, a receipt for the proceeds derived from the sale of the Bonds, a receipt for the proceeds derived from the sale of the Notes, an order to the Trustee, a general certificate of the City, and, with respect to the Bonds, an Information Return for Tax-Exempt Governmental Obligations, Form 8038-G (Rev. November 2000).

3.05. The City Clerk is hereby authorized and directed to certify a copy of this resolution and cause the same to be filed with the Hennepin County Director of Property Taxation, exercising the powers of the county auditor under Minnesota Statutes, Section 475.63, and to obtain the certificate of the Director of Property Taxation as the registration of the Bonds and the Notes. Copies of this resolution shall also be delivered to the Finance Officer of the City.

SECTION 4. MISCELLANEOUS

4.01. All agreements, covenants, and obligations of the City contained in this resolution and in the above-referenced documents shall be deemed to be the agreements, covenants, and obligations of the City to the full extent authorized or permitted by law, and all such agreements, covenants, and obligations shall be binding on the City and enforceable in accordance with their terms. No agreement, covenant, or obligation contained in this resolution or in the above-referenced documents shall be deemed to be an agreement, covenant, or obligation of any member of the City Council, or of any officer, employee, or agent of the City in that person's individual capacity. Neither the members of the City Council, nor any officer executing the Bonds or the Notes shall be liable personally on the Bonds or the Notes or be subject to any personal liability or accountability by reason of the issuance of the Bonds or the Notes.

4.02. Nothing in this resolution or in the above-referenced documents is intended or shall be constructed to confer upon any person (other than as provided in the Indenture, the

Bonds, the Notes, and the other agreements, instruments, and documents hereby approved) any right, remedy, or claim, legal or equitable, under and by reason of this resolution or any provision of this resolution.

4.03. If for any reason the Mayor, Finance Officer, City Clerk, or any other officers, employees, or agents of the City authorized to execute certificates, instruments, or other written documents on behalf of the City shall for any reason cease to be an officer, employee, or agent of the City after the execution by such person of any certificate, instrument, or other written document, such fact shall not affect the validity or enforceability of such certificate, instrument, or other written document. If for any reason the Mayor, Finance Officer, City Clerk, or any other officers, employees, or agents of the City authorized to execute certificates, instruments, or other written documents on behalf of the City shall be unavailable to execute such certificates, instruments, or other written documents for any reason, such certificates, instruments, or other written documents may be executed by a deputy or assistant to such officer, or by such other officer of the City as in the opinion of the City Attorney is authorized to sign such document.

4.04. The City shall not take any action or authorize any action to be taken in connection with the application or investment of the proceeds of the Bonds or any related activity which would cause the Bonds to be deemed to be “private activity bonds”, within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the “Code”). The City shall not take any action or authorize any action to be taken in connection with the application or investment of the proceeds of the Bonds or any related activity which would cause the Bonds to be deemed to be “arbitrage bonds”, within the meaning of Section 148 of the Code. Furthermore, the City shall take all such actions as may be required under the Code to ensure that interest on the Bonds is not and does not become includable in gross income for federal income tax purposes.

4.05. The authority to approve, execute and deliver future amendments to the documents executed and delivered by the City in connection with the transactions contemplated hereby is hereby delegated to the Finance Officer, subject to the following conditions: (a) such amendments do not require the consent of the holders of the Bonds or the Notes or, if required, such consent has been obtained; (b) such amendments do not materially adversely affect the interests of the City as the issuer of the Bonds or the Notes; (c) such amendments do not contravene or violate any policy of the City; (d) such amendments are acceptable in form and substance to the City Attorney, bond counsel or other counsel retained by the City to review such amendments; and (e) the City has received, if necessary, an opinion of bond counsel to the effect that the amendments will not adversely affect the tax-exempt character or interest on the Bonds, if the Bonds are then tax-exempt obligations, and (f) such amendments do not materially prejudice the interests of the owners of the Bonds or the Notes. The authorization hereby given shall be further construed as authorization for the execution and delivery of such certificates and related items as may be required to demonstrate compliance with the agreements being amended and the terms of this resolution. The execution of any instrument by the Finance Officer shall be conclusive evidence of the approval of such instruments in accordance with the terms hereof. In the absence of the Finance Officer, any instrument authorized by this paragraph to be executed and delivered by the Finance Officer may be executed by such other officer of the City as in the opinion of the City Attorney is authorized to execute and deliver such document.

4.06. Effective Date. This Resolution shall take effect and be in force from and after its approval and publication.

MN130-113 (JU)
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